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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,933	10/27/2004	Donna L. Mendrick	OCIM-002/15US 309602-2082	7118
58349 7590 06/29/2009 COOLEY GODWARD KRONISH LLP ATTN: Patent Group Suite 1100 777 - 6th Street, NW WASHINGTON, DC 20001				
EXAMINER				
RIGGS II, LARRY D				
ART UNIT		PAPER NUMBER		
1631				
MAIL DATE		DELIVERY MODE		
06/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/501,933

Applicant(s)

MENDRICK ET AL.

Examiner

LARRY D. RIGGS II

Art Unit

1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 70-79.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☒ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/LDR/
Larry Riggs
Examiner, Art Unit 1631

/ERIC S. DEJONG/
Primary Examiner, Art Unit 1631

Continuation of 3. NOTE:

Applicants proposed after Final amendment contains proposed amendments to claims comprising the new limitation of having liver tissue or liver cells not exposed to a hepatotoxin. Therefore, the proposed after Final amendment, if entered would require further search and/or consideration and will not be entered.

Continuation of Item 11. NOTE:

The rejections and/or objections set forth in the Final Office action, mailed 02/04/2009 are maintained for reasons of record.

Claims 70-79 are rejected under 35 U.S.C. 112, First paragraph as failing to comply with the enablement requirement.

Claims 70-79 are rejected under 35 U.S.C. 112, Second Paragraph as being indefinite.

Claims 70-79 are provisionally rejected under obvious-type double patenting of applications 10/515,373, 11/547,759, 12/043,666, 12/181,020, 12/256,225.

Applicants arguments filed 06/04/2009 have been fully considered but are not persuasive.

In regard to the rejection of claims under 35 USC 112, First Paragraph, applicants argue that the current rejections are traversed based on the current amendments and because a similar application with a similar rejection under 35 USC 112, First Paragraph is now a US patent. In regard to the rejection of claims under 35 USC 112, Second paragraph, applicants argue that the current rejections are traversed based on the current amendments. In regard to the rejection of claims under obvious-type double patenting, applicants argue that a terminal disclaimer of one of the cited applications has been approved.

Applicants arguments have been considered but are not persuasive because they are directed to claim amendments that have not been entered. As such, applicants arguments are not persuasive with respect to the latest claims of record, filed 04/28/2008.

Applicants submission of a terminal disclaimer, filed 04/28/2009, if entered would be sufficient to overcome the obvious-type double patenting rejections.